

## **TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE**

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to amend regulations contained in Title 4, Division 9, Chapter 1, Article 1, Section 4001 to update tolerances and specifications for commercial weighing and measuring devices.

A public hearing regarding this proposal is not currently scheduled. However, any interested person or duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be scheduled.

Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the Department of Food and Agriculture, upon its own motion or at the instance of any interested person, may thereafter adopt the proposal substantially as set forth without further notice.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Food and Agriculture, Division of Measurement Standards, 8500 Fruitridge Road, Sacramento, California 95826. Comments may also be submitted by facsimile (FAX) at (916) 229-3026 or by e-mail at [DMS@cdfa.ca.gov](mailto:DMS@cdfa.ca.gov). Comments must be submitted prior to 4:30 p.m. on August 9, 2003.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Secretary of the Department of Food and Agriculture is granted the authority to adopt such regulations as are reasonably necessary to carry out the provisions of the Business and Professions Code, Division 5, Section 12107. This section in part requires the Department to adopt, by reference, the latest standards as recommended by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology (NIST), Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," except as specifically modified, amended or rejected by the Department.

This proposal would amend regulations contained in Title 4, Division 9, Chapter 1, Article 1, Section 4001 by adopting an exception to NIST Handbook 44, Section G-S.1.1 and the definitions in Appendix D for "remanufactured device", "repaired device", "remanufactured element", and "repaired element". California already has a definition of "Repair" in California Business and Professions Code Section 12531, "Service Agency". Subsection (b) defines a Service Agent as any person employed to repair a commercial device and subsection (f) defines

“Repair”. NIST Handbook 44, Section G-S.1.1 and the definitions in Appendix D for “repaired device”, “remanufactured device”, “repaired element”, and “remanufactured element” conflict with this section.

The effect of the NIST Handbook 44 requirements is to create new definitions and to set identification and marking requirements for “repaired” commercial weighing and measuring devices which are similar to, but inconsistent with California law and regulations already adopted pursuant to Business and Professions Code Section 12531.

Title 4, Division 9, Chapter 4, Section 4085, “Responsibility of a Service Agency” already requires marking and reporting requirements from “service agents” who “repair” or “remanufacture” commercial weighing and measuring instruments which adequately fulfills the intent of NIST Handbook 44 Section G-S.1.1. The section and its related definitions are therefore unnecessary.

#### **SECTION 4001. EXCEPTIONS**

As provided for in Stats. 1993, Chapter 621, Business and Professions Code, Section 12107, this proposal adds G-S.1.1 and the definitions in Appendix D for “remanufactured device”, “repaired device”, “remanufactured element”, and “repaired element” to the list of NIST Handbook 44 sections that California is not adopting.

#### **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Secretary has initially determined that this proposal does not impose a mandate on local agencies or school districts.

The Secretary has also initially determined that this action will involve no costs or savings to any other state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.

#### **EFFECT ON HOUSING COSTS**

The Department has initially determined that the proposed action will not affect housing costs.

#### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Department has made an initial determination that the proposed action will not have a statewide adverse economic impact directly affecting business,

including the ability of California businesses to compete with businesses in other states.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

It is anticipated that there will be little or no cost impact on private persons or business since this exception will prevent new and different requirements for Service Agencies from being implemented in California. Businesses who employ service agencies will not be affected since this proposal will not result in new or different requirements and existing requirements already adequately require service agents to identify their work.

### **ASSESSMENT REGARDING EFFECT ON JOB/BUSINESSES**

The Department has made an initial assessment that the proposed regulation would not: (1) create or eliminate jobs within California; (2) create new business or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business in California.

### **ALTERNATIVES CONSIDERED**

The Secretary must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### **AUTHORITY AND REFERENCE**

Pursuant to Business and Professions Code, Division 5, Sections 12027 and 12107.

### **CONTACT PERSON**

Inquiries regarding the notice or the substance of the proposed regulatory action may be directed to Roger Macey, Branch Chief, Division of Measurement Standards at (916) 229-3043 or Ken Lake, Program Supervisor, Division of Measurement Standards at (916) 229-3047.

### **EFFECT ON SMALL BUSINESS**

The Department has made an initial assessment that the proposed regulation will provide a significant savings for small business since this exception will prevent new and different requirements for Service Agencies from being implemented in California.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the statement of reasons, and the proposed regulation in ~~strikeout~~ and underline form may be obtained upon request. The rulemaking file, and all information on which the proposal is based, is located at the Division of Measurement Standards, 8500 Fruitridge Road, Sacramento, California 95826, and may be obtained upon request. Additionally, all documents relating to this rulemaking file may be obtained from the Department's web site located at [www.cdfa.ca.gov/dms](http://www.cdfa.ca.gov/dms).

Following the written comment period, the Department will adopt the proposal substantially as set forth above without further notice. If the regulation adopted by the Department differs from but is sufficiently related to the action proposed, it will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

A Final Statement of Reasons, when available, may be obtained by contacting Roger Macey, Branch Chief, Division of Measurement Standards, at (916) 229-3043.

DEPARTMENT OF FOOD AND AGRICULTURE

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Date

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Valerie Brown, Deputy Secretary